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IN THE

Supreme Court of the United States

OCTOBER TERM 1977

No. ...77-749

C.M.C., a Minor, by MARTIN CONWAY, her Guardian ad Litem, and C. M., her Mother and Natural Guardian, and STATE OF MINNESOTA,

Appellees,

vs.

A.P.F.,

Appellant.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

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The Appellee moves the Court to dismiss the appeal herein, or in the alternative, to affirm the order of the Minnesota Supreme Court on the ground that it is manifest that the question on which the decision of the cause depends is so unsubstantial as not to need further argument.

I. THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE.

A. The Statute

This appeal raises the question of the constitutionality of that certain portion of Minnesota Statutes Annotated Chapter 257 concerning the establishment of paternity of an illegitimate child. M.S.A. 257 contains twenty specific statutory provisions found between M.S.A. 257.251 and M.S.A. 257.32. Appellant does not specifically state which section he finds constitutionally repugnant and apparently is seeking to have all provisions of the Minnesota Statutes concerning the establishment of paternity declared unconstitutional.

B. Statement of the Case

On May 17, 1969, Ruth Carlson, plaintiff in this action, gave birth to an illegitimate female child, born alive in the City of Minneapolis at Mount Sinai Hospital (1973 T., p. 17). The child was conceived on or about August 22, 1968 (1973 T., p. 51-52). The plaintiff alleged that James Malcolm Williams, the defendant in this action, was the father of her child. The plaintiff being a recipient of A.F.D.C. (1975 T., p. 17) initially retained the Hennepin County Attorney's Office to represent her. Prior to the filing of the complaint the County Attorney withdrew from the matter and the plaintiff retained William Starr; a complaint was then filed for the plaintiff on December 15, 1971 (Plaintiff's Appendix, p. 1). On November 19, 1973, the matter finally came to trial before a jury with the Honorable Paul A. Lommen, Judge of District Court, presiding (1973 T.).

The plaintiff testified that she was 45 years of age at date of trial and that she had been a resident of Minneapolis since 1946 (1973 T., p. 9). The plaintiff was a professional secretary, working for 3M from 1946 through 1969 (1973 T., p. 10).

The plaintiff met the defendant in either 1959 or 1960, retaining him in a professional capacity (1973 T., p. 10). The parties became involved on a social basis and began a sexual relationship in 1964 which continued past the date of conception on 8/22/68 (1973 T., p. 16, 63-64). On the evening of 8/22/68 the parties double dated with Beatrice Olson and Herbert Johnson (1973 T., p. 13, 79). This was corroborated by the testimony of Beatrice Olson (1973 T., p. 75-83). After dropping off the other couple the defendant and plaintiff retired to the third floor of the defendant's office building where they had sexual intercourse (1973 T., p. 151-152). Plaintiff testified that she had sexual relations with no man in her life other than James Malcolm Williams (1973 T., p. 19).

Defendant denied that he had any kind of sexual relationship with the plaintiff and claimed that he had not even seen her personally from March, 1968 to 1972 (1973 T., p. 137). The defendant provided several somewhat conflicting theories to the jury to explain the plaintiff's allegations. He initially testified he felt the plaintiff was having psychological difficulties and that she had threatened to revenge herself upon him for his reluctance to become involved with her personal life (1973 T., p. 129). The defendant then subsequently accused the plaintiff of being very mercenary and that she picked him as the father to satisfy her friend, Edgar Hedin (1973 T., p. 143). Finally he stated that he did not doubt that the plaintiff believed she was telling the truth, having persuaded herself that he was the father as it was easier to accept a man like the defendant rather "than some long hair rock

and roll player". (1973 T., p. 145). From the record it is not terribly apparent which of these divergent hypotheses the defendant intended the jury to accept: revenge, greed, or neurotic delusion.

On November 20, 1973 the jury returned a verdict in favor of the plaintiff on the question of paternity. The damages issue was then extensively negotiated through the date of the damages hearing on October 21, 1975. At the damages trial four lawyers appeared: Thomas L. Aarestad for the Hennepin County Welfare Department, Robert Zalk for the plaintiff, William Starr for Karen Ann Carlson and for himself, and the defendant pro se.

Testimony demonstrated that the plaintiff had been a recipient of A.F.D.C. since 1969 and that the plaintiff had certain expenses arising from the needs of herself and her child (1975 T., p. 10-18).

The defendant extensively testified as to his financial position including his present and expected income from the practice of law and his various interests in real estate and the stock market (1975 T., p. 25-58). The defendant's fee income runs between $2,000 and $5,000 per month (1975 T., p. 26). The defendant offices in his own building whose title he has in the name of a corporation known as Barristers and Solicitors whose stock is owned by the defendant's family in trust while he is trustee for life (1975 T., p. 30). Additionally the defendant has cases pending whose potential legal fees go up to the six and seven figure range (1975 T., p. 43-45).

The defendant also testified that he had substantial personal assets. The defendant owns stock in a number of corporations providing $2,500 yearly in dividends (1975 T., p. 31-32). His personal corporation owns a farm located south of Minneapolis which the defendant utilizes as a loss on his tax

returns (1975 T., p. 31). He also owns a large home in Minnetonka (1975 T., p. 37-38, 59-60).

The defendant's personal life style includes trips to the Caribbean and to Florida (1975 T., p. 40). He has owned a large boat in Lake Minnetonka (1975 T., p. 34) and presently lives in his four bedroom home in Minnetonka which is located on two acres of land (1975 T., p. 37-38, 59-60). He provides his youngest legitimate child with $3,000 to $4,000 per year in tuition plus an additional $50 per week in spending money (1975 T., p. 49-50). He has provided another son with a farm to operate and he continues to subsidize its operation (1975 T., p. 51-52). The defendant has also provided for his secretary and her children in his trust (1975 T., p. 58).

The defendant recommended that $25 to $40 per month should be sufficient to properly care, maintain and educate his child by the plaintiff (1975 T., p. 92).

After receiving additional testimony on the cost of raising a child in an A.F.D.C. household of two from a representative of the Hennepin County Welfare Department, Maxine Moerer (1975 T., p. 115-128), the Court determined the defendant's liability (Respondent's Appendix, p. 4).

Upon receipt of the Court's verdict the defendant filed a long list of motions for a new trial and judgment notwithstanding the verdict (Appellant's Appendix, p. 16-25). Upon rejection of these motions by the trial court the defendant filed an appeal to the Minnesota Supreme Court.

In the Appellant's Brief submitted to the Minnesota Supreme Court the Appellant briefly argued that the "paternity law" in Minnesota is unconstitutional (Appellant's Brief, p. 44-46). He did not provide any authority which would indicate that the Minnesota statutory procedure was suspect but he did list two Minnesota cases which upheld its constitution-

ality (Appellant's Brief, p. 46). Subsequently in his Motion for Rehearing the Appellant also provided the lower court with a complete record of the case referred to in the Jurisdictional Statement, Appendix, p. 4-28. The Minnesota Supreme Court upheld the constitutionality of the statute.

II. ARGUMENT

A. The Appellant is Procedurally Defective in the Preparation of his Jursdictional Statement

Under Supreme Court Rule 15.1(b), the failure of the Appellant to present with accuracy, brevity and clearness whatever is essential to an adequate understanding of the points required for consideration will be reason for denying the petition.

The Appellant has not cited a specific portion of a provision of Minnesota Statutes Annotated Chapter 257 which he finds constitutionally defective. The Appellant has not cited a specific provision of the United States Constitution which is violated by the operation of M.S.A. Chapter 257 as required by Supreme Court Rule 15.1(b) iii. Appellant has not demonstrated with particularity how he was personally damaged in any respect by an invidious discrimination created by M.S.A. Chapter 257 or in its application by the Minnesota state courts. It is submitted that this appeal is frivolous and that its only purpose is to further delay implementation of the Appellant's obligation for the support of his child who at this date is already eight years of age.

B. The Case Presents No Substantial Question Not Previously Decided by This Court; The Judgment Rests Upon an Adequate Non-Federal Basis

Under the common law there was no obligation on the part of the father to provide support for his illegitimate offspring. *State v. Wiebke*, 154 Minn. 61, 191 N.W. 249 (1922). The state legislatures took action to establish this obligation by passage of various laws popularly known as paternity statutes. The Appellant would seek to have the Minnesota statutory scheme declared unconstitutional on the grounds that it does not provide duties and obligations on the part of the mother. Jurisdictional Statement, p. 3-4. These duties and obligations are pre-existent to the paternity laws and it is well settled that the mother as guardian of an illegitimate child continues to have a secondary obligation for its support. *State v. Juvenile Court of Ramsey County*, 197 N.W. 1006, 147 Minn. 222 (1920). *State v. Sax*, 232 Minn. 1, 42 N.W. 2d 680 (1950); *Moir v. Kowalkowski*, 282 Minn. 243, 164 N.W. 2d 69 (1969).

The duty of support by the mother is universally preserved either by implication (Minn.) or by statute. Under Minnesota Statutes Annotated 257.251, the father is held liable for the ". . . reasonable expense of the mother's pregnancy and confinement . . . and for the education and necessary support . . . of the child." Considerable latitude is therefore given the court to determine under the circumstances what amount of confinement and child support is "reasonable" and "necessary" in any particular situation.

In the instant case it is obvious that the father as a successful lawyer is in a far better position to provide support than is the mother whose only income since the birth and because of the birth of the child has been her A.F.D.C. grant

(1975 T., p. 10-18). This situation is clearly distinguishable from the situation a lower Minnesota court faced in the case of *William C. and Carol C. v. Robert L.*, Hennepin County District Court File No. 6977 Ill. cited by the Appellant as conflicting authority. In the latter case the mother, a fully employed individual, had given up her child for adoption immediately after birth and at all times had financial capacity in excess of that possessed by the father, a student. (Appellant's Petition for Rehearing, Appendix, p. 2). The court refused the mother's motion to require the father to pay the entire medical bill despite the mother's capacity to contribute and apportioned responsibility equally between the parties. There exists an adequate factual basis for this result under Minnesota Statutes Annotated 257.251 and M.S.A. 257.257. In the instant case, despite the Appellant's generosity with his other children and his substantial ability to contribute (1975 T., p. 25-58) the court limited his support obligation to the amount of public assistance supplied directly for the benefit of his child (1975 T., p. 115-128).

It is well established that procedures concerning the establishment of the paternity of an illegitimate child and the requirements of parental support of children are generally matters of local concern. However, in *Gomey v. Perez*, 93 S.Ct. 872, 409 U.S. 535, 35 L.Ed.2d 56 (1973), the United States Supreme Court did extend the father's primary responsibility for the support of legitimate children to include illegitimate children. Minnesota Statutes Annotated 257.257 is consistent with this decision.

The court by implication once more approved the principle that the state may place the primary responsibility for the support of children upon the father. A number of other federal

decisions support this principle. *Maryland Drydock v. Parker*, 37 F.Supp. 717 (1941); *Jackson v. Jackson*, 276 F.2d 501, 507 U.S. App. D.C. 255, cert. denied 815 Ct. 94, 364 U.S. 849, 5 L.Ed.2d 73 (1960); *CIR v. Casperson*, 119 F.2d 94, cert. denied 62 S.Ct. 83, 314 U.S. 643, 86 L.Ed. 516 (1942).

The Equal Protection Clause guarantees only the protection enjoyed by other persons, or classes in the same place and under like circumstances; it is not a guarantee of equality of operation or application of state legislation on all citizens of the state, *Snowden v. Hughes*, 64 S.Ct. 397, 321 U.S. 1, 882 L.Ed. 497 (1943). Discrimination alone is not the test of equal protection. The United States Supreme Court in *Williamsen v. Lee Optical*, 348 U.S. 483, 755 S. Ct. 461, 99 L.Ed. 563, 1573 (1954), stated guidelines by which a legislative act may be evaluated, to-wit:

> "Evils in the same field may be of different properties, may require different remedies, or so the legislature may think. (citations omitted). Or reform may take one step at a time, addressing itself to the phase of the problem which appears most pressing to the legislative mind (citations omitted). The legislature may select one phase of one field and apply a remedy. The prohibition of Equal Protection goes no further than invidious discrimination."

A rational basis for the classification need only exist. A statutory discrimination should not be set aside if *any* state of facts may be reasonable conceived to justify it. *Dandridge v. Williams*, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970). In the instant case there certainly would seem to be foundation for the legislation in question. The plight of the illegitimate child under the common law has been thoroughly discussed in this

lawsuit. The pressing social need to establish a connection between the father and the illegitimate child is only too obvious. The statutes allow the court in its examination of the father's obligations to exercise extensive latitude in making inquiry into every facet of the respective resources of the parties and the needs of the child before making its determination. In the future, social changes in the status of the American woman may very well antiquate the present requirement that a father bear the primary duty of support for his children but currently (as is all too obvious from the position of the mother in the instant case), there does not exist a financial equality between the sexes sufficient to classify this discrimination as invidous.

CONCLUSION

WHEREFORE, Appellee respectfully submits that the questions upon which this cause depend are so unsubstantial as not to need further argument, and appellee respectfully moves the court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the Minnesota Supreme Court.

Respectfully submitted,

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